Supreme Court, U.S.
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NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

ERNEST P. FROHLICH,
PETITIONER,

vs.

THE STATE OF ARIZONA,
RESPONDENT.

ON A PETITION FOR A WRIT OF CERTIORARI
TO THE PIMA COUNTY CONSOLIDATED JUSTICE
COURT FOR THE STATE OF ARIZONA

RESPONDENT'S BRIEF IN OPPOSITION

JOHN W.DICKINSON
Office of the Pima County Attorney
32 N. Stone, Ste. 1400
Tucson, Arizona 85701
602-740-5679
Counsel for Respondent

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QUESTIONS PRESENTED

1. WHETHER THE SUPREME COURT MUST DENY THE PETITION FOR CERTIORARI WHEN SUPREME COURT PRECEDENT MANDATES THAT IT SHOULD REFUSE TO EXERCISE ITS DISCRETIONARY JURISDICTION?

PARTIES TO THE CASE

HON. ROBERT GIBSON, JUSTICE OF THE PEACE, PIMA CO. CONSOLIDATED JUSTICE COURTS

HON. EMOJEAN GIRARD, JUSTICE OF THE PEACE, PIMA CO. CONSOLIDATED JUSTICE COURTS

HON. ROBERT DONFELD, JUSTICE OF THE PEACE, PIMA CO. CONSOLIDATED JUSTICE COURTS

HON. JOHN F. KELLY, JUDGE OF THE SUPERIOR COURT IN AND FOR PIMA COUNTY, ARIZONA

ERNEST P. FROHLICH, PETITIONER AND DEFENDANT IN PIMA CO. JUSTICE COURT CAUSE NUMBER CR 90-006603 AND APPELLANT IN PIMA CO. SUPERIOR COURT CAUSE NO. CR-32362

THE PIMA COUNTY ATTORNEY'S OFFICE, FOR THE STATE OF ARIZONA IN THE ABOVE ACTIONS

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CITATIONS OF OPINIONS

The Respondent would adopt the Petitioner's Citations of Opinions with the following modifications:

1. There is no record of a refusal by Judge Gibson to make a record of the hearing. There is also no record that the court denied the Petitioner his counsel of choice, and no record that the court appointed inadequate counsel.

2. There is no record that the court appointed counsel was inadequate. There is also no record that the Petitioner informed the arresting officer that he needed counsel during arrest.

9. It should be added that in the letter to the Petitioner, Arizona Supreme Court Clerk Noel K. Dessaint instructed the Petitioner that his Motion for

Reconsideration must be filed, pursuant to Rule 31.18 of the Arizona Rules of Criminal Procedure, only by order of the Arizona Court of Appeals.

STATEMENT REGARDING JURISDICTION

The Petitioner cites the 4th, 5th, and 6th Amendments to the United States Constitution as authority for why this Court has jurisdiction to hear his case. He makes no further statement.

Any statutory authority allowing this Court to review the petition for certiorari arises from 28 U.S.C. § 1257.

This honorable Court should deny its discretionary jurisdiction for the following reasons: (1) the Petitioner seeks review of specific evidentiary findings, and Supreme Court precedent mandates that this Court does not accept review of factual disputes; (2) the Petitioner seeks review of concurrent factual findings of two lower courts, which this Court also does not review; (3)

the matters sought to be reviewed have been settled in previous United States Supreme Court case law; (4) the ineffective assistance of counsel and counsel of choice issues presented were not properly raised below, were not adequately reserved in the record, and cannot therefore be adequately reviewed by this Court; (5) the Petitioner has failed to forward special and important reasons that warrant a granting of certiorari; and (6) the Petitioner's application for certiorari inappropriately addresses issues in argument not addressed in the questions presented for review, and is also inaccurate and unclear.

The reasons for the request of denial are more fully set forth in the arguments section, infra.

TITLE 28, UNITED STATES CODE, § 1257

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by The Supreme Court by a writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

STATEMENT OF THE CASE

On May 25, 1990, at approximately 8:00 p.m., Pima County Park Ranger Kevin Madden was patrolling Tucson Mountain Park northbound on Kinney Road, in Pima County, Arizona. (Transcript of Jury Trial, Sept. 11, 1990, p. 39; hereinafter TJT). Ranger Madden saw the Petitioner, Ernest Frohlich, proceed north on Kinney Road. (TJT, p. 50). the Petitioner's automobile swerved off the right side of the road and abruptly corrected itself back onto the highway. (Id.) As Ranger Madden followed the Petitioner's vehicle, he witnessed it weaving back and forth in its own lane. (Id.). The car then crossed over the double yellow lines and entered the lane of oncoming traffic. (Id.). When the Petitioner's car swerved into the lane of

oncoming traffic again, Ranger Madden activated his overhead emergency lights and attempted to stop the vehicle. (Id.). The Petitioner did not stop, but instead crossed over the double yellow lines a third time. (Id., p. 51). Ranger Madden finally activated his public address system to order the Petitioner over to the side of the road. (Id., p. 52).

Ranger Madden approached the Petitioner and asked for his driver's license, automobile registration, and proof of insurance. (TJT, p. 52). The Petitioner refused to comply until he was told why he had been stopped. (Id., p. 53). While the Petitioner searched for his paperwork, Ranger Madden noticed the Petitioner's speech was slurred, his breath smelled strongly of alcohol, and

his eyes were watery and bloodshot. (Id., p. 54). When Ranger Madden asked the Petitioner to turn his ignition off, the Petitioner did not respond. (Id.). Concerned for his safety, Ranger Madden called for backup. (Id., p. 56).

Pima County Parks and Recreations Ranger Chester Manning arrived shortly thereafter. (TJT, p. 58). The Petitioner was handcuffed, arrested, and given his warnings as required by Miranda v. Arizona, 384 U.S. 436, 16 L.Ed.2d 694, 86 S.Ct. 1602 (1966). (Id., p. 60-61). The Petitioner walked to the patrol car with an unsteady, uncoordinated gait. (Id., p. 61). An inventory search of the Petitioner's car produced one full and one partially full can of beer. (Id., p. 63).

Later at Pretrial Services, the

Petitioner was read Arizona's Implied Consent law and asked to submit to an intoxilyzer test. (TJT, p. 64). The Petitioner refused to take a test. (Id., p. 66). The Petitioner was charged with driving under the influence of intoxicating liquor in violation of Arizona law, Title 28 Arizona Revised Statutes, § 692. (Id., p. 125).

On July 12, 1990, Judge Robert Gibson of the Pima County Consolidated Justice Courts appointed Mr. David Bruce to represent the Petitioner over the Petitioner's objection. (Justice Court Minute Entry, July 12, 1990). The Petitioner and his counsel filed several motions. (All are contained in the record from the Justice Court). He requested the Justice Court to dismiss for lack of

articulable facts to stop and for lack of probable cause to arrest. He filed a motion to suppress statements based on the allegation that Miranda rights were not read to him. He twice requested the court to suppress the intoxilyzer refusal, claiming he had requested counsel and that he had been denied counsel. The Petitioner also filed a motion to dismiss claiming this Supreme Court had ruled in "Brisco v. LaHue 460 US ____(1983), that police officers may commit perjury with impunity," and that therefore he could not receive a fair trial. A hearing on all of the Petitioner's motions was held September 4, 1990, before the Honorable Emojean Girard. (Transcription of Material Hearing, Sept. 4, 1990; hereinafter TMH). Mr. David Bruce assisted the Petitioner in

the course of this hearing. (Id.).

At the motions hearing only Ranger Kevin Madden testified. (TMH) There was no testimony adduced that the Defendant ever asked for an attorney. (Id.) The Petitioner made several complaints of violation of Constitutional rights, but Ranger Madden did not recall him mentioning anything about an attorney. (Id., p. 21). Up until the time that Ranger Madden took the Petitioner to the intoxilyzer (or blood-alcohol) machine, Ranger Madden did not recall the Petitioner asking for an attorney. (Id., p.20). When asked to take the intoxilyzer test, the Petitioner refused, stating that police would be illegally taking evidence without an attorney. (Id., p.22). In the entire contact, Ranger Madden could not

recall any direct request for counsel. (Id., p. 30).

After hearing the evidence and argument of counsel and the Petitioner, Judge Girard made the factual finding that the Petitioner did not ask for counsel during his contact with police. (TMH, p. 64). Judge Girard denied the motion to dismiss based on the alleged Miranda violation, and found that there was no interrogation after Miranda rights were given. (Id.). She reserved her final ruling. (Id., p. 65).

On the day of trial, September 11, 1990, the Petitioner insisted on representing himself, and the trial court (Judge Robert Donfeld) provided Mr. David Bruce to advise and assist the Petitioner during trial. (TJT, p.2). Judge Donfeld

indicated before the trial began that Judge Girard had communicated to him that she had denied all of the Petitioner's motions raised at the evidentiary hearing. (Id., p.7). Judge Girard had made specific factual findings that there was suspicion to stop and probable cause [to arrest]. (Id.). Judge Girard also found that the Petitioner did not request an attorney and that the motion regarding Miranda rights was denied. (Id.).

The Petitioner was tried before a jury on September 11, 1990, and was convicted of Driving Under the Influence of Alcohol. (TJT, p. 128). Counsel for the Respondent can find no record in the Justice Court that the Petitioner ever raised the issue of counsel of choice. There exists only the objection to the appointment of

counsel before Judge Gibson on July 12, 1990, and a brief discussion at the evidentiary hearing of September 4, 1990, between Judge Girard and Mr. Bruce, regarding the appointment and the Petitioner's objection. (TMH, p. 4). The counsel of choice issue was inappropriately addressed for the first time in the Petitioner's Opening Brief on Appeal to the Pima County Superior Court. (Petitioner's Appellant's Opening Brief, Pima County Superior Court). The Petitioner filed for post-conviction relief pursuant to Rule 32, Arizona Rules of Criminal Procedure, but the issues addressed in that petition were regarding Judge Girard's denial of the Miranda motion to suppress, and a ruling made by Judge Donfeld at trial. (Petition for

Post-Conviction Relief, September 19, 1990, Pima County Consolidated Justice Court). Judge Donfeld denied the petition at Sentencing. (Transcription of Sentencing, October 3, 1990, p. 3).

The Petitioner appealed the rulings of the various justices of the peace and the jury verdict to the Pima County Superior Court as allowed by Arizona Statute (Id.). Superior Court Judge John F. Kelly found "that there is substantial evidence in the record to support the jury's verdict and to support the decision of the Justice of the Peace with regard to the motions to suppress." (Pima County Superior Court Minute Entry, February 6, 1992). The Honorable John F. Kelly found further that "the decision of the Justice of the Peace was not illegal or an abuse of discretion,

therefore, IT IS ORDERED that the judgment of the Justice Court is affirmed." (Id.).

When the Petitioner sought relief in the Court of Appeals for the State of Arizona, that court dismissed the action as it lacked any jurisdiction to hear the Petitioner's appeal. (Court of Appeals Order, May 4, 1992). When the Petitioner petitioned the Arizona Supreme Court for review, that court denied review. (Supreme Court of Arizona Order, August 10, 1992). No Motion for Reconsideration of the denial was filed in the Court of Appeals, and when the time for doing so expired, the Court of Appeals reaffirmed its order dismissing the action. (Court of Appeals Order, August 26, 1992).

SUMMARY OF ARGUMENTS

I.
This Court Should Deny Review Because The Petitioner Seeks Review of Specific Factual Evidentiary Findings.

Unless there is no evidence at all to support factual determination, precedent prevents the Supreme Court from reviewing alleged incorrect factual findings.

II.
This Court Should Deny Review Because The Petitioner Seeks Review of Concurrent Factual Findings of Two Lower Courts.

Absent a very obvious and exceptional show of error in a factual determination, precedent prevents the Supreme Court from reviewing the concurrent findings of two lower courts.

III.
This Court Should Deny Review As The Petitioner Seeks Review of Matters Settled By This Court In South Dakota v. Neville, and Caplin & Drysdale v. United States.

This Court has decided that a refusal

to take a blood-alcohol test in a Driving Under the Influence of Alcohol case is admissible at trial and is not a violation of the Miranda doctrine. This is because the Court has mandated that the request is not considered interrogation under Miranda but is activity normally attendant to arrest and custody. This Court has also decided that although indigent defendants have a right to appointed counsel, they do not have a right to counsel of choice. Therefore, the issues the Petitioner presents have already been settled by this Court, and precedent prevents this Court from reviewing this petition.

IV.
This Court Should Deny Review As The Issue of Right To Counsel Was Not Properly Raised Below.

This Court will not consider issues not properly raised and addressed in

courts below as it must have a reviewable record from which to make its determinations. The Petitioner did not sufficiently raise the issues regarding counsel in the lower court and therefore this Court does not have an adequate record to review.

V.
This Court Should Deny Review As The Petitioner Failed To Provide This Court With Special And Important Reasons Why This Court Should Grant Review.

Rules of this Court require the Petitioner to provide special and important reasons why the Court should grant review. The Petitioner has offered no such reasons, but merely claims his rights were violated.

VI.

This Court Should Deny Review As The Petitioner Raises Issues In Argument Not Addressed In The Questions Presented For Review, And His Petition Is Inaccurate and Unclear.

Rules of this Court require the Petitioner to clearly set forth the questions to be reviewed and make argument regarding only these questions presented. Otherwise the Court will not consider them. The Petitioner addresses issues in argument not presented in his questions. He writes an inaccurate, unclear brief from which argument cannot be taken, and argues issues never properly raised in the lower court. Therefore the Petition is not suitable for review as the Petitioner has failed to adequately frame and clearly raise issues as required by the Rules of this Court.

ARGUMENTS

I.
This Court Should Deny Review Because The Petitioner Seeks Review Of Specific Evidentiary Findings.

This Court does not ordinarily review specific evidentiary findings. In United States v. Johnston, 268 U.S. 220, 69 L.Ed. 925, 45 S.Ct. 496 (1925), this Court mandated: "We do not grant a certiorari to review evidence and discuss specific facts." 268 U.S. at 227. Justice Powell reiterated this dictate in United States v. Doe, 465 U.S. 605, 79 L.Ed.2d 552, 104 S.Ct. 1237 (1984) when the issue involved a United States District Court's ". . . determination of factual issues. See United States v. Nixon, 418 U.S. 683, 702, 41 L.Ed.2d 1039, 94 S.Ct. 3090 (1974)." 465 U.S. at 614. This Court stated :

"Therefore, we will not overturn that finding unless it has no support in the record. Ibid." Id.

An example of a case where "no support" could be found in the record occurred in Thompson v. City of Louisville, 362 U.S. 199, 4 L.Ed. 654, 80 S.Ct. 624 (1960), where the case ". . . turns not on the sufficiency of the evidence, but on whether this conviction rests upon any evidence at all." 362 U.S. at 199. Where there is no evidence to support the conviction, Due Process mandates its reversal. Id. In Thompson, the evidence showed the defendant was dancing in a restaurant where he had permission to be and that he was argumentative when arrested. Id., at 200. There was no evidence at all of the crimes

of loitering and disorderly conduct adduced in court and this Court overturned the convictions. Id., at 206.

In this case, however, the record clearly shows that Judge Girard had made a factual determination with ample support in the record. The judge heard testimony at the evidentiary hearing from the arresting officer that the Petitioner never asked for counsel. The judge made that specific factual finding. She denied the Petitioner's motion to suppress based on alleged Miranda violations and found that no interrogation occurred. The judge allowed the evidence of the refusal to take a blood-alcohol test to come into evidence.

The Petitioner asks this Court to review those specific factual findings,

and thus no grounds for review. There is support in the record, however, for these findings. The Respondent prays this Court will deny such a request as contrary to its precedent.

II.
This Court Should Deny Review Because The Petitioner Seeks Review of Concurrent Factual Findings of Two Lower Courts.

Hand-in-hand with the policy in Respondent's first argument is its second: that this Court will not review concurrent findings of two lower courts. The Court must not disturb the factual determinations of the lower courts since there is support in the record for the respective courts' findings.

The precedent for this Court to deny the petition for certiorari is set down in Graver Tank & Mfg. Co. v. Linde Air

Products Co., 336 U.S. 271, 93 L.Ed, 672, 69 S.Ct. 535 (1949). This Court stated: "A court of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error. [citations omitted]." 336 U.S. at 275. The following Supreme Court cases have reaffirmed this precedent: Berenyi v. Immigration Service, 385 U.S. 630, 17 L.Ed.2d 656, 87 S.Ct. 666 (1967); Branti v. Finkel, 445 U.S. 507, 63 L.Ed.2d 574, 100 S.Ct. 1287 (1980); United States v. Doe, 465 U.S. 605, 79 L.Ed.2d 552, 104 S.Ct. 1237 (1984); and NCAA v. Board of Regents of Univ. of Okla., 468 U.S. 85, 82 L.Ed.2d 70, 104 S.Ct. 2948 (1984).

The Honorable Emojean Girard denied the Petitioner's motion to suppress the refusal to take a blood-alcohol test and to suppress statements. The Petitioner appealed to the Pima County Superior Court where the Honorable John F. Kelly reviewed his appeal. After having reviewed the transcripts and briefs, Judge Kelly denied the appeal and found that there was substantial evidence to support the jury's verdict and Judge Girard's decision to deny the motions to suppress. He found the Judge Girard's determinations to be (1) not illegal and (2) not an abuse of discretion.

Since there are concurrent factual findings by two lower courts, this Court must deny the writ of certiorari. There is no very obvious and exceptional error

in the determinations, Graver, supra, and the Petitioner has failed to demonstrate any. The evidence shows an intoxicated driver was stopped with good cause, that he was given Miranda warnings, and made no statements. The evidence showed the Petitioner never asked for counsel. No evidence was offered to the contrary. The Petitioner's bald assertion during argument to the contrary has no weight since there is no support in the record for his claims.

III.
This Court Should Deny Review As The Petitioner Seeks Review of Matters Settled By This Court In South Dakota v. Neville, And Caplin & Drysdale v. United States.

The Petitioner's first three questions presented would appear to involve the same issue; namely, whether the trial court abused its discretion in finding that

there was no violation of Miranda v. Arizona, supra? No incriminating statements of the Defendant were introduced at trial as none were ever made. The refusal to take the intoxilyzer, however, was admitted at trial. Judge Girard also found that the Petitioner never requested counsel. She denied his motion to suppress.

This Court has already addressed the issue of whether such a refusal to take a blood-alcohol test is admissible at trial. In South Dakota v. Neville, 459 U.S. 553, 564, 74 L.Ed.2d 748, 103 S.Ct. 916 (1983), Justice O'Connor expressed the Court's opinion: "We hold, therefore, that a refusal to take a blood-alcohol test, after a police officer has lawfully requested it, is not an act coerced by the

officer, and thus is not protected by the privilege of self-incrimination." In Footnote 15 to the opinion's holding, the Court reasoned that the question by police whether a suspect will submit to a blood-alcohol test is not an interrogation within the meaning of Miranda. Id. The request to take a blood-alcohol test is "normally attendant to arrest and custody" and therefore falls outside of the Miranda prophylactic parameters. Id.

In this case, therefore, the Court has already addressed the issue sought by Petitioner for review and has resolved the question against the Petitioner's favor. His claim that the trial court abused its discretion in finding that there was no Miranda violation, is specifically rejected in South Dakota v. Neville, and

this issue need not be revisited. Even if the Petitioner had asked for counsel, the Neville ruling brings into doubt whether that fact alone would have served to preclude such non-testimonial evidence.

The last question presented by the Petitioner goes to whether his counsel was inadequate and whether his objection to not being appointed counsel of choice will suffice to require a reversal of conviction. In Caplin & Drysdale v. United States, 491 U.S. 617, 105 L.Ed.2d 528, 109 S.Ct. 2667 (1989), this Court held that: "Petitioner does not, nor could it defensibly do so, assert that impecunious defendants have a Sixth Amendment right to choose counsel. The Amendment guarantees defendants in criminal cases the right to adequate

representation, but those who do not have the means to hire their own lawyers have no cognizable complaint so long as they are adequately represented by attorneys appointed by the courts." 491 U.S. at 624. Thus the Petitioner's claim that he was entitled to counsel of choice is clearly without merit.

There is no application for counsel based upon indigency in the court's file and it would appear that Judge Gibson of the Pima County Justice Courts acted upon his own initiative in appointing Mr. David Bruce on behalf of the Petitioner on July 12, 1990. The record is silent as to the reason. It would appear that Judge Gibson appointed counsel for the Petitioner to use as he wished in assisting his defense. (TMH, p. 4). Assuming arguendo that the

Petitioner was entitled to legal representation on the DUI charge due to his indigency, the Caplin & Drysdale opinion clearly states that impecunious defendants do not have the right to counsel of choice. Therefore the issue has been addressed by this Court and no redetermination is warranted. Again, assuming arguendo that the Petitioner was given a "free" lawyer, the issue is moot because the Petitioner could choose to use Mr. Bruce as he wished or to hire his own lawyer. Choice, then, is not at issue. The Petitioner cannot prevail on his claim and in any event because he did choose to utilize Mr. Bruce's services both at the evidentiary hearing and at trial. The Respondent prays this Court not to grant review of this issue already decided.

IV.
This Court Should Deny Review As The Issue Of Right To Counsel Was Not Properly Raised Below By Petitioner.

In Tacon v. Arizona, 410 U.S. 351, 35 L.Ed.2d 346, 93 S.Ct. 998 (1973), in a per curiam decision, the Court dismissed a writ of certiorari as improvidently granted when it realized that an issue within the brief was "not raised by the petitioner below nor passed upon by the Arizona Supreme Court." 410 U.S. at 352. The Court stated: "We cannot decide issues raised for the first time here. [citation omitted]." Id. The Court further reasoned that because the remaining issue was primarily a factual issue, which by itself did not warrant granting of certiorari jurisdiction, the writ must be dismissed. Id. Similarly, this petition for certiorari must also be

dismissed.

In order to make a determination of ineffective assistance of counsel, the lower court must apply the standard enunciated in Strickland v. Washington, 466 U.S. 668, 80 L.Ed. 2d 674, 104 S.Ct. 2052 (1984), wherein the proponent of the ineffectiveness claim must show that his counsel's performance was deficient and below an objective standard of reasonableness, and that this deficient performance prejudiced the proponent.

The record from the Justice Court is devoid of any reference to a resolution of the issues regarding ineffective assistance of counsel or counsel of choice. There was no such resolution requested by the Petitioner.

Normally an ineffective assistance of

counsel claim is addressed in a petition for post-conviction relief. (Rule 32, Arizona Rules of Criminal Procedure). The Petitioner did file such a petition but directed his prayers for relief to matters aside from any ineffective assistance of counsel claim. There is no record of any objection regarding "counsel of choice" in the Justice Court.

The first time that the Petitioner asked for a determination of these issues was in his Appellant's Opening Brief, filed in the Pima County Superior Court on December 16, 1991. The Court cannot review an inadequate record and cannot review issues when they are raised for the first time in appellate pleadings. Review of these issues is not proper because of the Petitioner's failure to raise issues

below. The Respondent would urge this Court to follow the precedent set forth in Tacon, supra, and dismiss the petition for certiorari.

V.
This Court Should Deny Review As The Petitioner Failed To Provide The Court With Special And Important Reasons Why The Court Should Grant Review

Rule 10.1 of the Rules of the United States Supreme Court provides in part: "A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefor." The Petitioner's only jurisdictional statement is "The court has jurisdiction in this case as it involves the violation of the Petitioner's Fourth, Fifth and Sixth Amendment rights secured

by the Constitution of the United States." (Petitioner's "Petition for Writ of Certiorari to the United States Court of Appeals", p. 12.).

The Respondent urges this Court to dismiss the petition as the Petitioner has advanced no special and important reasons why the Court should exercise its discretionary jurisdiction. There is no legal controversy to resolve among the various Federal and State courts. There is no extraordinary, shocking or disturbing result in this case. There is no unsettled question of law which warrants the granting of the petition. The Petitioner has failed to advance any reasons for this Court to grant jurisdiction and only raises empty and unsupported claims that his rights were

violated. Judicial economy warrants this petition's dismissal.

VI.
This Court Should Deny Review As The Petitioner Has Addressed Issues In Argument Not Presented In The Questions Presented For Review, And Is Inaccurate And Unclear.

Rule 14.1(a) of the Rules of the United States Supreme Court provides in part that: "Only the questions set forth in the petition, or fairly included therein, will be considered by the Court." The Petitioner has presented four questions concerning the constitutionality of the lower court's denial of certain motions and the lower court's treatment of the Petitioner's claim of ineffective assistance of counsel and counsel of choice.

In his arguments section, the Petitioner raises issues not addressed in

his questions presented. These issues are not fairly included in the brief as they are an inaccurate and unclear presentation on the law. The Petitioner's argument is set forth in a confusing manner, and his arguments that he was denied due process and equal protection are superficial and legally unsupported.

Finally, Respondent's arguments in sections I through V of this brief contain challenges to factual determinations and concurrent holdings of two lower courts. Both of these situations may not form the basis of granting review. He also raises issues already settled by this Court in precedent. Some claims were only first raised on appeal to the Pima County Superior Court and there is no adequate Justice Court record upon which this Court

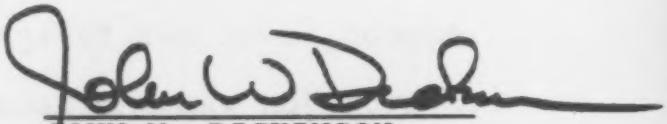
can grant review. Lastly, the Petitioner seems to address issues affecting only State law and regarding which there are no federal issues.

Since the arguments are not addressed in the questions presented nor are they fairly included in the Petitioner's argument, these issues are not properly raised and must not form the grounds upon which this Court grants the petition.

CONCLUSION

This Court should dismiss the petition for a writ of certiorari. The Petitioner has given the Court no reason to exercise its discretionary jurisdiction. His arguments present no issues this Court must resolve in the interest of Justice.

WHERETOFORE, the Respondent prays this Court will dismiss the writ of certiorari and refuse to exercise its discretionary jurisdiction over this matter.



JOHN W. DICKINSON
Office of the Pima Co. Attorney
32 N. Stone, Ste. 1400
Tucson, Arizona 85701
Tel. 602-740-5679
Counsel for Respondent